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EXAMINER

HUYNH, LOUIS K

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 09/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,227

Applicant(s)

YAMAY, YEHUDA

Examiner

Louis K. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Israel on November 02, 1999. It is noted, however, that applicant has not filed a certified copy of the Israel 132708 application as required by 35 U.S.C. 119(b).

Specification

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

3. A substitute specification including the claims is required pursuant to 37 CFR 1.125(a) because the specification including the claims contain numerous hand written insertions and/or deletions. Furthermore, line 1 of page 8 is unreadable.

A substitute specification filed under 37 CFR 1.125(a) must only contain subject matter from the original specification and any previously entered amendment under 37 CFR 1.121. If the substitute specification contains additional subject matter not of record, the substitute specification must be filed under 37 CFR 1.125(b) and must be accompanied by: 1) a statement that the substitute specification contains no new matter; and 2) a marked-up copy showing the amendments to be made via the substitute specification relative to the specification at the time the substitute specification is filed.

Drawings

4. The drawings filed on December 19, 2001 are considered to be informal because of the correction marked-ups on several drawing figures. The drawings are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Objections

5. The claims are objected to because they include reference characters which are not enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 15-16: "to form a gas-tight steel" is not understood. Perhaps, the phrase "to form a gas-tight seal" would be more appropriate.

Claim 6 appears to be incomplete for lacking the structural relationship between the gas outlets and the isolated space. Further more, "the gas outlets are" lacks proper antecedent basis because only one gas outlet has been introduced in claim 1.

Claim 7 appear to be incomplete for lacking a means for engaging the closure-forming member against the spacer member. Without the means for engaging the closure-forming member against the spacer member, the spacer member cannot be not sealingly engaged with the closure-forming member and the isolated space cannot be defined.

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Claim 7, line 17: "them" is indefinite for it is unclear as to what elements applicant is referring to.

Claim 11, line 2: "said opening" is indefinite for it is unclear whether the opening is the opening of the spacer member or the opening of the holder. Furthermore, it is unclear what "sealed space" (line 3) applicant is referring to.

Claim 13, line 3: "by means of heat welding" is indefinite for it is unclear whether the means of heat welding is a part of the claimed apparatus. Applicant should positively recite structural and functional relationship of the means of heat welding with respect to the claimed apparatus as opposed to a process step in a narrative form.

Claim 14, line 2: "the heat welding" lacks proper antecedent basis.

Claim 16, line 3: "an opening in the spacer member" renders the claim indefinite for it is unclear whether or not the opening in the spacer member recited in claim 16 is the same as the opening of the spacer member recited in claim 7.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1 and 3-6, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Noel et al. (US 5,718,101).

Noel et al. discloses a method for packaging a product in a hermetically sealed container including the steps of: introducing a food product (20) into a container (14) having flange (22);

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forming an isolated space (18) between the container (14) and a lid-forming film (24); introducing a gas through an inlet (58) (column 7, lines 12-27); and displacing the lid-forming film (24) toward the container (14) to attach the lid-forming film to the flange (22) of the container (14) to form a gas-tight seal.

With respect to claims 5 and 6, Noel et al. discloses a vacuum outlet (56).

10. Claims 7-9, 12-16, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Noel et al. (US 5,718,101).

Noel et al. discloses an apparatus for forming a hermetically sealed container including: a holder (12) having an axially projecting skirt for holding a container (14) having flange (22); a spacer (44) having an opening engageable with a lid-forming film (24) for defining a space between the container (14) and the lid-forming film (24); a gas inlet (58) and a gas outlet (56); an axially displaceable heat sealing mechanism (30) for displacing the lid-forming film (24) toward the container (14) through the opening of the spacer (44) and attaching the lid-forming film to the flange (22) of the container (14) to form a gas-tight seal; and an axially displaceable trimming member (46) for trimming the lid-forming film (24) around the flange (22) of the container (14).

11. Claims 7-16, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by WO'400 (WO 91/03400).

WO'400 discloses an apparatus for forming a hermetically sealed container including: a holder (81) having an axially projecting skirt for holding a container (3) having flange (9); a

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spacer (65) having an opening engageable with a lid-forming film (5) for defining a space between the container (3) and the lid-forming film (5); a gas inlet (97) formed on the spacer (65) and a gas outlet (93) formed on the holder (81); an axially displaceable heat sealing mechanism (103) for displacing the lid-forming film (5) toward the container (3) through the opening of the spacer (65) and attaching the lid-forming film to the flange (9) of the container (3) to form a gas-tight seal; and an axially displaceable trimming member (133) for trimming the lid-forming film (5) around the flange (9) of the container (3).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Noel Et al. (US 5,718, 101) in view of Grune et al. (US 5,071,667).

The method of Noel et al. meets all of applicant's claimed subject matter but lacks the specific teaching of the product being a pasty material.

However, Grune et al. teaches that pasty material such as milk-containing product is gas-treated to promote expulsion of air from the container prior to the final sealing step in order to prolong storage life of the product (column 2, lines 22-42).

Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the method of Noel et al. by having pasty

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material as the product to be gas treated, as taught by Grune et al., in order to prolong storage life of the pasty material.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US patent No. 3,283,469 to McBrady et al.; US patent No. 4,201,030 to Mahaffy et al.; US patent No. 4,223,513 to Mahaffy et al.; US patent No. 4,472,924 to Vogele et al.; US patent No. 4,624,099 to Harder; US patent No. 4,982,555 to Ingemann; US patent No. 5,155,974 to Garwood; US patent No. 5,271,207 to Epstein et al.; US patent No. 5,509,252 to Gorlich; US patent No. 5,555,705 to Balcombe; US patent No. 5,749,203 to McGowan, Jr..

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (703) 306-5694. The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

LH
September 4, 2002


JOHN SIPOS
PRIMARY EXAMINER